



impairment and a 26 percent work disability (a disability greater than the functional impairment rating), designating the period of work disability from December 17, 1999, to October 1, 2001. The Judge arrived at the 26 percent work disability by averaging a 20 percent task loss with a 32 percent wage loss.

Respondent and its insurance carrier contend Judge Moore erred. They argue (1) claimant's injury is limited to the right lower extremity and does not involve the hip joint, (2) claimant has failed to prove a permanent functional impairment to the right lower extremity, (3) claimant has likewise failed to prove any permanent low back injury, and (4) in the event claimant has proven a permanent injury either to the hip or low back, her permanent partial general disability should be limited to the functional impairment rating as claimant unreasonably refused work offered by respondent that was within her medical restrictions and which would have paid claimant a post-injury wage that was comparable to her pre-injury wage.

Accordingly, respondent and its insurance carrier request the Board to deny claimant's request for any permanent disability benefits.

Conversely, claimant argues she developed a right snapping hip syndrome and chronic low back pain due to the July 1999 accident. Citing the *Bryant*<sup>1</sup> decision, claimant argues the situs of the impairment determines whether an injury is treated as a scheduled<sup>2</sup> injury as opposed to a non-scheduled<sup>3</sup> injury under the Workers Compensation Act. As claimant's injury pertains to an area around her hip, claimant argues that she has a hip injury, which is compensated under the Act as a non-scheduled injury. Claimant also argues that she is entitled to receive permanent disability benefits for a non-scheduled injury due to a permanent back injury and her resulting chronic low back complaints.

Claimant requests the Board to find that she has sustained a 43 percent task loss and a 39.5 percent wage loss for a 41.25 percent permanent partial general disability during the period of work disability designated by the Judge. In the alternative, claimant requests the Board to affirm the 26 percent work disability.

The only issue before the Board on this appeal is the nature and extent of claimant's injury and disability. But in addressing that general issue, the Board must also determine the following:

---

<sup>1</sup> *Bryant v. Excel Corp.*, 239 Kan. 688, 722 P.2d 579 (1986).

<sup>2</sup> K.S.A. 1999 Supp. 44-510d.

<sup>3</sup> K.S.A. 1999 Supp. 44-510e.

1. Did claimant sustain a scheduled or non-scheduled injury?
2. What is the extent of permanent functional impairment that claimant sustained due to the July 1999 accident?
3. If claimant sustained a non-scheduled injury, did claimant unreasonably refuse to work additional hours that would have given her a post-injury wage comparable to her pre-injury wage?
4. If claimant sustained a non-scheduled injury, what are her task loss and wage loss percentages for computing a permanent partial general disability under K.S.A. 1999 Supp. 44-510e?
5. Is claimant entitled to receive a work disability for the period from December 17, 1999, to October 1, 2001?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, the Board finds and concludes:

On July 23, 1999, claimant injured herself while working as a certified nurses' aide (CNA) for respondent. The parties stipulated that claimant's accident arose out of and in the course of employment with respondent.

The Board adopts the findings and conclusions entered by Judge Moore in the November 27, 2001 Award. Accordingly, the Board concludes claimant sustained a 6.4 percent whole body functional impairment due to the injuries that she received in the July 23, 1999 accident. Additionally, based upon claimant's 20 percent task loss and 32 percent wage loss that is attributable to the July 1999 accident, claimant has sustained a 26 percent work disability, as determined by the Judge.

After the July 23, 1999 accident, claimant could not perform her former job duties as a CNA. When claimant returned to work in late September 1999, respondent accommodated her restrictions and placed claimant in a part-time secretarial position, where claimant worked approximately 20 to 26 hours per week, depending upon the available work.

Claimant also sought work from other departments in respondent's hospital and when she testified in August 2001 was working approximately eight to 10 hours in those areas. In August 2001, claimant was running out of work in her part-time secretarial position. Claimant's supervisor discussed that situation with respondent's hospital administrator and later advised claimant to seek other employment. By October 1, 2001,

claimant had found another job with another employer, earning an amount comparable to her pre-injury wage.

In addition to the issue whether claimant sustained a scheduled or non-scheduled injury, another principal issue in this claim is whether claimant is entitled to receive a work disability for the period leading up to her new job on October 1, 2001. In January 2000, respondent offered claimant additional hours working as a ward clerk, which would have increased claimant's post-injury wage to an amount comparable to her pre-injury earnings. The ward clerk position would have provided claimant with an additional 16 hours per week but would have required her to work from three to eleven p.m. two days per week. And on some weekends, claimant would have to work those hours on both Saturday and Sunday.

The Judge found that claimant, who is a single mother, did not unreasonably refuse to work those additional hours as claimant could not find daycare services for her two young children. The Board agrees. Claimant did not decline the ward clerk duties without a valid reason, nor did she conduct herself in a manner that was tantamount to bad faith. Likewise, the facts do not indicate that she was attempting to manipulate the amount that she would receive in workers compensation benefits. Conversely, the evidence establishes that she was justified in declining the ward clerk job and the evidence, likewise, establishes that she exercised good faith in seeking other employment.

When considering an employee's rejection of an offer of accommodated work, the factfinder [sic] may weigh factors other than the physical demands of the offered work.<sup>4</sup>

The Board affirms the work disability award for the period from December 17, 1999, to October 1, 2001, when claimant began earning a comparable wage.

At oral argument claimant challenged the 20 percent task loss found by the Judge. Claimant argued that although Mr. Hardin's task list contained duplicate work tasks, the Judge adjusted and reduced the doctors' task loss opinions too much for those duplications. But claimant was unable to quantify what the appropriate task loss should be after eliminating the duplicated tasks. In the Award, the Judge adjusted Dr. Johnson's task loss opinion from 35 percent to 19 percent and adjusted Dr. Koprivica's task loss opinion from 41 percent to 21 percent. After reviewing the task list and the doctors' testimonies, the Board finds the Judge did not err.

Accordingly, claimant is entitled to both temporary total and temporary partial disability benefits while recovering from the July 1999 accident, followed by a 26 percent

---

<sup>4</sup> *Parsons v. Seaboard Farms, Inc.*, 27 Kan. App. 2d 843, syl. 2, 9 P.3d 591 (2000).

work disability until October 1, 2001, when claimant's permanent partial general disability is reduced to the 6.4 percent functional impairment rating.

The Judge's computation of benefits should be modified as the Judge awarded claimant temporary total disability benefits and temporary partial disability benefits, followed by permanent partial disability benefits for the 6.4 percent functional impairment rating, and then followed by the 26 percent work disability. But the evidence dictates that the 26 percent work disability pertains to the period from December 17, 1999, through September 30, 2001, which is to be followed by the 6.4 percent permanent partial general disability representing the functional impairment rating.

### **AWARD**

**WHEREFORE**, the Board modifies the Award, as follows:

Deeanna Cyr is granted compensation from Mitchell County Hospital and its insurance carrier for a July 23, 1999 accident and resulting disability. Based upon an average weekly wage of \$302.34, Ms. Cyr is awarded 8.57 weeks of temporary total disability benefits at the rate of \$201.57 per week in the sum of \$1,727.45 and 6.09 weeks of temporary partial disability benefits in the sum of \$1,227.22.

Claimant is also awarded 93.43<sup>5</sup> weeks of permanent partial disability benefits for the period of December 17, 1999, through September 30, 2001, at \$201.57 per week in the sum of \$18,832.69, for a 26 percent work disability. Beginning October 1, 2001, claimant's permanent partial general disability decreases to the 6.4 percent whole body functional impairment rating, leaving no additional permanent disability benefits due and owing due to the accelerated payout provisions of the Workers Compensation Act.<sup>6</sup>

Accordingly, claimant is entitled to a total award of \$21,787.36, which is all due and owing less any amounts previously paid.

The Board adopts the remaining orders set forth in the Award that are not inconsistent with the above.

**IT IS SO ORDERED.**

---

<sup>5</sup> Although a 26 percent work disability would otherwise pay out 107.90 weeks of benefits, the period from December 17, 1999, through September 30, 2001, is only 93.43 weeks long.

<sup>6</sup> See *Bohanan v. U.S.D. No. 260*, 24 Kan. App. 2d 362, 947 P.2d 440 (1997).

Dated this \_\_\_\_ day of May 2002.

---

BOARD MEMBER

---

BOARD MEMBER

---

BOARD MEMBER

c: Norman R. Kelly, Attorney for Claimant  
Eric K. Kuhn, Attorney for Respondent and its Insurance Carrier  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Workers Compensation Director